

Civil Revision No.3245 of 1984

1

In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.3245 of 1984.

Date of decision:4.5.2007.

Bharat Petroleum Corporation Limited.

...Petitioner.

Versus

Jagan Nath and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.Raman Sharma Advocate for the petitioner.

Mr.Arun Jain and Mr. Amit Jain Advocates for the respondents.

...

Judgment.

S. N. Aggarwal, J.

Jagan Nath, respondent No.1 and Ram Dass (predecessor-in-interest of respondent Nos.3 to 7) were the owners of plot measuring 85'x80' situated within the Municipal limits, Dasuya. They leased out the same in favour of Burmah-Shell Oil Storage & Distributing Company of India Limited (predecessor-in-interest of the petitioner) vide lease deed dated 29.1.1968 for a period of ten years commencing with effect from 1.8.1967 to 31.7.1977 on the monthly rent of Rs.50/-. It was renewable. Jagan Nath, respondent No.1, one of the landlords filed ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act (in short the Rent Act) on

22.1.1980 against the petitioner and respondent No.2 for ejectment on the ground of non-payment of arrears of rent and subletting.

The petitioner and respondent No.2 filed a joint written reply. The date of lease deed and the period of tenancy were admitted. The arrears of rent were tendered on the first date of hearing. Sub-tenancy was denied on the plea that overall control and legal possession remains with the petitioner. Respondent No.2 M/s. Lachhman Dass Subhash Chander were merely licensees of the petitioner. The business was being run by the petitioner. It was pleaded that as per clause 5 of the agreement dated 29.1.1968, there was written consent by the landlord-respondent for subletting. Hence, dismissal of ejectment petition was prayed.

Issues were framed.

The parties led the evidence.

The learned Rent Controller vide order dated 24.12.1982 dismissed the ejectment petition.

Respondent No.1 filed an appeal against the said judgment. The learned Appellate Authority set aside the findings recorded by the learned Rent Controller, accepted the appeal and ordered ejectment of the petitioner and respondent No.2 from the premises, vide judgment dated 25.9.1984.

Hence, the present petition.

The submission of learned counsel for the petitioner was two fold. Firstly, under clause 5 of the agreement dated 29.1.1968, permission was granted by the landlord-respondent No.1 to the petitioner to lease out the premises to any person. The second submission was that respondent

No.2 was only a licensee and not a sub tenant for which the license deed dated 21.9.1970 was executed between the petitioner and respondent No.2. Hence, the ground of subletting was contested. Reliance was placed on the judgment of Hon'ble Supreme Court reported as **C.M.Beena and another v. P.N.Ramachandra Rao**, AIR 2004 Supreme Court 2103.

On the other hand, the submission of learned counsel for respondent No.1 was that permission granted under clause 5 of the agreement expired with the expiry of ten years from 1.8.1967 when the lease expired as the same was not got renewed by the petitioner after the expiry of ten years. It was also submitted that although as per writing dated 21.9.1970 (Exhibit R-2), respondent No.2 was a licensee but, in fact, he was a sub tenant. Hence, it was prayed that there is no illegality in the impugned order dated 25.9.1984 passed by the learned Appellate Authority. Reliance was placed on the judgment of this Court reported as **Kartar Singh and others v. Tarlok Singh and others**, AIR 1974 Punjab and Haryana 34 and also on the judgments of the Hon'ble Supreme Court judgments reported as **Capt. B.V.D' Souza Versus Antonio Fausto Fernades**, 1990(1) Rent Control Reporter 186 and **Achintya Kumar Saha Versus M/s. Nancee Printers and others**, 2004(1) Haryana Rent Reporter 407.

These submissions have been considered.

It is not disputed between the parties that Jagan Nath, respondent No.1 and Ram Dass (predecessor-in-interest of respondent Nos.3 to 7) had executed lease deed in favour of the predecessor-in-interest of the petitioner on 29.1.1968 which was for a period of ten years with

effect from 1.8.1967. It has been proved on the Lower Court file as Exhibit R-1. Clause 5 of this lease deed reads as under:-

“The Lessees shall have full liberty to sublet or licence the said premises without restriction and without any further reference to the Lessor and this clause shall at all times be deemed to be the written consent of the Lessor for the purpose.”

Under clause 10 of the agreement dated 29.1.1968, liberty was granted to the lessees to get the same renewed. This clause reads as under:-

“If the Lessees shall be desirous of renewing this present Lease and of such desire shall have given to the Lessor not less than two months' notice in writing prior to the expiration hereof the Lessor shall grant to them a renewed lease of the said plot of land for a further period of Ten years to commence from the date of expiry hereof at the same terms and conditions in all respects as are reserved and contained herein.”

Admittedly, the lease deed was not got renewed by the petitioner. It means, therefore, that the lease deed dated 29.1.1968 was valid for ten years from 1.8.1967 to 31.7.1977. Thereafter the petitioner continued not as a contractual tenant but as a statutory tenant. Liberty of subletting the premises which was given to the petitioner by the landlord-respondent under clause 5 of the agreement dated 29.1.1968 (Exhibit R-1) ceased to exist after 31.7.1977.

The submission of learned counsel for the petitioner was that the petitioner had exercised the right under clause 5 of the agreement dated 29.1.1968 (Exhibit R-1) during the subsistence of the agreement. Therefore,

the subletting, if any, has the written consent of the landlord-respondent.

This submission has no force at all.

The right under clause 5 of the agreement subsisted during the tenure of agreement dated 29.1.1968. After the agreement had come to end the subsistence of clause 5 of the agreement dated 29.1.1968 had also come to an end. It is not the date of subletting but it is the subsistence of the agreement dated 29.1.1968 which is a relevant factor. It was observed by this Court in **Kartar Singh's** case (supra) as under:-

“It is, therefore, obvious that the permission to sublet which was given in the lease-deed itself, was for a fixed period of 20 years and it automatically ended with the expiry of the period of lease. With the termination of the lease, the terms and conditions contained therein were also extinguished. Besides if a lessee remains in occupation of the premises after the lease period is over, he becomes a statutory tenant and he is not, under the law, authorised to sublet the premises. Consequently, if the sub-tenants continued on the property even after the expiry of the period of lease, then the tenants would be guilty of subletting without the written permission of the landlords which, as I have already said, pertained to a period of only 20 years, that is, upto 10th February, 1969. There is, thus, no substance in the first contention as well.”

The submission of learned counsel for the respondent-landlord that the petitioner had no right even to induct the licensee in the demised property after the expiry of ten years. This submission appears to be

without legs because the landlord-respondent had filed the ejectment petition on the ground of subletting. Therefore, the respondent-landlord has to make out a case that the petitioner had sublet the premises to respondent No.2 and respondent No.2 was not a licensee.

The question before this Court for consideration, therefore, is whether respondent No.1 was a licensee or he was a sub tenant.

The learned counsel for the petitioner drew the attention of this Court towards document dated 21.9.1970 (Exhibit R-2) executed between the petitioner and respondent No.2 and submitted that it was a licence deed. Respondent No.2 was running the business of the petitioner in the demised property and the petitioner had the right to throw respondent No.2 out of those premises, and, therefore, respondent No.2 was a licensee and not a sub tenant.

This submission has been considered. No doubt the document (Exhibit R-2) has been drafted as a licence deed, but it may not in itself be sufficient to prove the status of respondent No.2 under the petitioner. Even in the judgment reported as **C.M.Beena and another's** case (supra), relied upon by the learned counsel for the petitioner, it was held by the Hon'ble Supreme Court in para No.9 as under:-

“A few principles are well settled. User of the terms like 'lease' or 'licence' or 'lessor' or 'licensor', 'rent', or licence fee' are not by themselves decisive of the nature of the right created by the document. An effort should be made to find out whether the deed confers a right to possess exclusively coupled with transfer of a right to enjoy the property or what has been

parted with is merely a right to use the property while the possession is retained by the owner. The conduct of the parties before and after the creation of relationship is of relevance for finding out their intention.”

It is, therefore, clear that the document itself may not be sufficient to prove if the person in possession was a licensee or a sub tenant. It is the conduct of the parties after the execution of the document which determines the status of the person in possession whether as a licensee or as a tenant.

The petitioner has not led any evidence to show if the petroleum products are supplied by the petitioner to respondent No.2 for onward sale to the customers and respondent No.2 is paid only the commission and that the business is being run by respondent No.2 in the demised property under the care of the petitioner and is being supervised by the functionaries of the petitioner time and again. Rather, the petitioner has examined A.D.Kaushal, Senior Sales Officer as RW-2 who deposed in the cross-examination that Lachhman Dass (respondent No.2) purchases oil from the commercial depot at Jalandhar and pays the price at Jalandhar by bank draft and then he sells the oil at Dasuya. If this is the business which the respondent is running in the demised property, then he is not the agent or licensee of the petitioner. Then, he is an independent dealer. He purchases the petroleum products from the petitioner from Jalandhar and makes the payment and the transaction between the petitioner and respondent No.2 is over. It is further sold by respondent No.2 in the demised property on his own terms and conditions.

If respondent No.2 had been a licensee of the petitioner, then the petroleum products would have been supplied by the petitioner to respondent No.2 at the demised property where respondent No.2 would have sold the same to the customers and the amount was accounted for by respondent No.2 to the petitioner after retaining the amount of commission. In such a situation, there would have been some connection in the business being run by respondent No.2 in the demised property under the supervision of the petitioner but that is not so as per statement of A.D.Kaushal, RW-2.

No doubt, Lachhman Dass while appearing as RW-1 deposed that he retains the commission at the rate of 5 paisa per litre on the diesel and 8 paisa per litre on the petrol. However, that statement is neither corroborated by A.D.Kaushal, RW-2 nor it is supported by any document. Therefore, the petitioner has failed to prove the kind of transactions which are taking place between the petitioner and respondent No.2 and it appears from the statement of A.D.Kaushal, RW-2 that respondent No.2 is carrying on independent business in the demised property after purchasing the goods from the petitioner. In this context, it would be of benefit to notice the observations made by the Hon'ble Supreme Court in the judgment reported as **M/s.Achintya Kumar Saha's** case (supra) as under:-

“7.Before coming to the arguments, we may point out that in cases where Courts are required to consider the nature of transactions and the status of parties thereto, one cannot go by mere nomenclatures such as, licence, licensee, licensor, licence fee etc. In order to ascertain the substance of the transaction, we have to ascertain the purpose and the substance of the

agreement. In such cases, intention of the parties is the deciding factor. In order to ascertain the intention, we have to examine the surrounding circumstances including the conduct of the parties. In the present case, the High Court was right in examining the terms of agreement coupled with the circumstances surrounding the agreement in question like exclusive possession of the premises being given to respondent Nos.1 and 2 for monetary consideration for 11 years with a clause of renewal of the licence for further 11 years, payment of municipal taxes by respondent Nos.1 and 2, the rent receipts issued by Smt. Madhuri Bose, the premises being let out for business purposes in a residential locality and conduct of the plaintiffs in not examining Ajoy Kumar Bose (respondent No.4) who is held to have consented to the agreement in question. All the above circumstances taken together show that respondent Nos.1 and 2 were not trespassers. They show that the agreement was a tenancy in disguise of a licence.”

It is, therefore, held that from the document dated 21.9.1970, Exhibit R-2 alone, it cannot be held that respondent No.2 was a licensee under the petitioner. Rather, the evidence led in this case clearly proves that the petitioner has handed over the possession of the demised property to respondent No.2 exclusively and has no control over the business being run by respondent No.2 in the demised property.

In view of the discussion held above, it is held that respondent No.2 is a sub tenant under the petitioner and not a licensee.

Civil Revision No.3245 of 1984
10

No merit.

Dismissed.

May 4 ,2007
Jaggi

(S. N. Aggarwal)
Judge